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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of:

Implementation of Section 9  
of the Communications Act;  
Assessment and Collection of  
Regulatory Fees for the 1994  
Fiscal Year

MD Docket No. 94-19

To: The Commission

COMMENTS OF IN-FLIGHT PHONE CORPORATION

In-Flight Phone Corp., one of three licensees in the 800 MHz Air-Ground Radiotelephone Service, submits these comments in response to the FCC's proposal to adopt regulations implementing Section 9 of the Communications Act, 47 U.S.C. § 159.<sup>1/</sup> Among other things, Section 9 requires the Commission to assess an annual fee of \$60 "per 1,000 subscribers" on any licensee regulated pursuant to Part 22 of the agency's rules. 47 U.S.C. § 159(g). The 800 MHz air-ground service is regulated under Part 22 of the FCC's rules.<sup>2/</sup>

In adopting rules to implement Section 9, the Commission needs to define the term "subscriber" in order to clarify an ambiguity

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<sup>1/</sup> The license of a fourth air-ground licensee, JET-TEL, has expired for failure to construct its system by the deadline established in the FCC's rules, but JET-TEL has asked the FCC not to cancel the license for an additional two years. The Commission is presently considering whether to grant this request. See JET-TEL Request for Waiver, File No. MSD-94-8 (filed Feb. 8, 1994).

<sup>2/</sup> Rules governing the air-ground service are published in Section 22.1100 et seq. of the Commission's regulations.

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that otherwise will exist. Black's Law Dictionary defines "subscriber" as follows:

"One who writes his name under a written instrument; one who affixes his signature to any document, whether for the purpose of authenticating or attesting it, of adopting its terms as his own expressions, or of binding himself by an engagement which it contains."<sup>3/</sup>

For most licensees regulated under Part 22 -- including cellular and paging licensees -- a "subscriber" reasonably can be thought of as the end-user of the licensee's service since the end-user has a written contractual relationship with the licensee. By contrast, an air-ground licensee's written contractual relationship is with each airline that agrees to let the licensee install communications equipment on the airline's aircraft. That equipment is used in turn by the airline's customers to make calls. The airline's customers have no prior contractual relationship with the licensee.

In-Flight urges the Commission to define "subscriber" for purposes of the air-ground service as a transceiver installed on an aircraft. Under this definition, an air-ground licensee would be deemed to have between 800-1,200 subscribers for each commercial airline customer it serves since a typical commercial airline has a fleet of between 350-400 aircraft, and an air-ground licensee serving that airline normally would install from two to four transceivers on an aircraft.<sup>4/</sup>

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<sup>3/</sup> Black's Law Dictionary 1279 (5th ed. 1979).

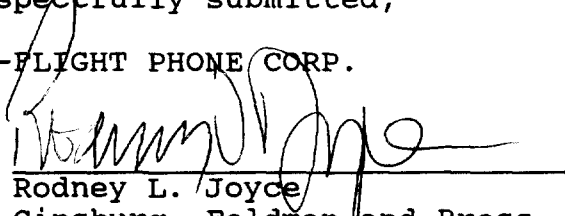
<sup>4/</sup> In addition, all three air-ground licensees provide service to the general aviation industry. Each general aviation aircraft on which service is provided has at least one transceiver.

Defining an air-ground "subscriber" as a transceiver installed by the licensee on an aircraft would require air-ground licensees to pay a larger annual fee than the literal definition of "subscriber" reflected in Black's Law Dictionary. However, In-Flight's proposed definition will treat air-ground licensees in a manner that is comparable to Part 22 licensees, like cellular and paging, who have written contracts with the end users who utilize their service. This is because in these other services, a subscriber and a transceiver are largely synonymous.

Respectfully submitted,

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April 7, 1994